The PRESIDING OFFICER. Objection is heard, and the bill will remain at the desk.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 37 on the Executive Calendar. I further ask consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, any statements relating to the nomination be printed in the RECORD, and that the Senate then resume legislative session, with all of the above occurring en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination was considered and confirmed, as follows:

THE JUDICIARY

Ralph R. Erickson, of North Dakota, to be United States District Judge for the District of North Dakota.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDERS FOR THURSDAY, MARCH 13, 2003

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Thursday, March 13; I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of Calendar No. 19, S. 3, the partial-birth abortion bill, as provided under the previous order.

I further ask unanimous consent that when the Senate resumes morning business, the first 20 minutes be equally divided between Senators HAGEL and DORGAN, with the remainder of the time until 11:30 a.m. to be equally divided between the two leaders or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SANTORUM. For the information of all Senators, at 9:30 tomorrow morning, the Senate will proceed to a vote on final passage of the partial-birth abortion bill. Following that vote, there will be a second vote which will be on the nomination of Thomas Varlan to be a U.S. District Judge for the Eastern District of Tennessee. Following the second vote, the Senate will proceed to a period of morning business until 11:30 a.m., as stipulated by the previous order.

At 11:30 a.m., the Senate will return to executive session and resume the consideration of the nomination of Miguel Estrada to be a Circuit Judge for the DC Circuit, with the time until 12:30 p.m. equally divided between the chairman and ranking member of the Judiciary Committee or their designees. At 12:30 p.m., the Senate will vote on the motion to invoke cloture on the nomination.

Following the cloture vote, the Senate will consider additional judicial nominations. Members should expect up to three additional rollcall votes on these judicial nominations.

PARTIAL-BIRTH ABORTION BAN ACT

Mr. SANTORUM. Mr. President, I just want to make a few additional comments before we wrap up on this debate. As I said earlier, this has been 7 years in the making, to take a bill that was conceived not by me but by Charles Canady over in the House of Representatives, who is now a Federal judge, I believe, and others here in the Senate. Senator Bob Smith from New Hampshire was one of the original leaders on this issue in the Senate. I know he will feel very good about passage of this legislation. It has been a long time coming. And a lot of effort has been put behind this measure by many Members. We have accomplished something that I think is really important.

People have said this is not going to stop any abortions. That may be the case. People have said this procedure is very rare. Well, I would argue that several thousand abortions a year, several thousand children being put through this brutality—I will, first, not classify thousands as rare—and as the Senator from Minnesota so eloquently said earlier today, even one should cause this Senate to stand up and say no.

This is a procedure that has no place in medicine, has no place in the legal behavior of anybody here in the United States of America.

We had a good debate today. We were able to defeat some amendments that were very much aimed at eliminating this ban, wiping the underlying bill out and replacing it with some language that would have, frankly, done little to nothing.

I thank all of my colleagues for standing up and sticking with this underlying bill, defeating amendments which I know in some cases were very difficult votes for Members. They came through, and we were able to get decisive votes.

We have had this partial-birth abortion debate so often, and it is our fifth time, unfortunately, we have had to be here on the floor of the Senate. But we also had a good debate on the whole underlying issue of Roe v. Wade.

While I was disappointed that the sense of the Senate passed, with, I believe, 52 positive votes here in the Senate affirming Roe v. Wade, I hope those who had an opportunity to listen to the debate today—for those who did not, I encourage them to pick up the RECORD because I think both sides of the aisle laid out their case. They laid out their case as to why this judicial decision is a good thing for America, as a country, and for the people—those who are for it. And those who are against it laid out a good argument, I would argue a compelling one, since I was one of the ones making it, that Roe v. Wade is not a good thing for this country. It is damaging to our culture, to the spirit of America.

I just want to reiterate why I feel so strongly about that. Because, as you noticed in the Senate, even during that debate, as heated as it was, you did not have a whole lot of people coming down here to engage in that debate.

It is the great moral issue of the day. There is no other issue that fires passion in people like this one, and it has for decades. It has been 30 years since the Supreme Court grabbed from the people the decision to determine what the collective morality of this country is with respect to the sanctity of human life in the womb. The Supreme Court took that decision from the people, and did it through legislating in a judicial decision.

Now, I would argue that irrespective of your position on abortion, as free people, we fought a revolution about those people taking rights from us or taking decisions from us, people who are not elected, who are not subject to the will of the voter. And that is what the U.S. Supreme Court did in 1973. They took from us, the people, the right to determine our fate, the right to determine our collective judgment, our moral decision.

Some people have come up to me for years and said: You don't have the right to make this moral decision. My response is: Well, if I, as your elected representative, don't have the right, what gives the right to nine unelected judges to make this decision for you?

This is a representative democracy. You elect people to make decisions for the collective whole. That is how the system works. And what judges are there to do is to determine whether they are within the constitutional framework. They are not to use, as a flimsy excuse, the Constitution to create legislation. That is the constitutional amendment process.

If you want to create a new right, pass a constitutional amendment. You don't create new rights by someone coming on a court and saying: Hey, I found a new right. That is exactly what the U.S. Supreme Court did in Roe v. Wade. They found a new right that for centuries—roughly two centuries—had not been found by some of the smartest men we have had in this country, some of the best and brightest.

Lawyers and nonlawyers in this country have served on the U.S. Supreme Court, and for all that time they

could not find this right. But in 1973, seven Justices—seven men—I hear so often: Well, why are you men making these decisions—seven men on the U.S. Supreme Court found a right.

They found a right that was not written in this Constitution. I don't think anyone will make the comment that the right to an abortion is written in the black letters of the Constitution. It is not.

So where did this right spring from? Where did this right emerge from? It emerged from the liberty clause of the 14th amendment—individual liberty. The Senator from Iowa read a subsequent case, abortion case, the Casey decision. The Casey decision was about the Pennsylvania Abortion Control Act signed by a Democrat, Robert Casey, who I had a great amount of respect for, his willingness to stand up to his party and do what he believed was truly the legacy of his party, to look out for those who are the least fortunate among us or have the least power among us. That is what the Governor used to say over and over.

He passed a bill through the Pennsylvania legislature and signed this bill to put ''restrictions'' on abortion, horrible things like parental consent. That means when a minor wants to have an abortion, the parent has to consent because it is a minor child; or parental notification, which is what is sort of the lay of the land today, we passed parental notification statutes. But there was a whole variety of things: 24-hour waiting period, informed consent. There were a bunch of things in this act.

The Supreme Court, in making this decision, it was really remarkable. They came up with this language, really chilling language for society. It is language that says the heart of liberty is man's right to determine the meaning of life, of the universe. It is the essence of liberty, they said. It is one person's right to define for themselves life and liberty and the universe and the world.

I have to say our Founding Fathers could not have thought that. Those who passed the 14th amendment were not our Founding Fathers, but those who passed the 14th amendment, I just don't believe they thought every single person in America had a right to define their own existence. And that was part of it—what their own existence meant, what the universe meant, what liberty and life meant. If we all go around deciding what we believe is right or wrong and what is fair or not fair, if we all have our own moral code and we are not responsible for anybody else, that is chaos. That is simply my ability to impose my will on you and right makes right. The strongest prevail. That is not what they had in mind. I am sure of that.

That is where the line of cases after Roe v. Wade has taken us. It has taken us down a road where it is just positivism. It is my ability to be able to put my will on you. That is why I referred to the two killers from Columbine who said: I am the law. Where do you think they got that? Where do you think that came from? It came from the U.S. Supreme Court because that is what the Supreme Court says, that you are the law. You can define your own existence. You can define your own universe. That is the essential meaning of liberty. That wasn't in a dissenting opinion or a concurring. It was in the main body of the opinion.

So liberty, twisted and tangled beyond recognition in the abortion cases, twisted and tangled so much by the 1973 Roe case. Because what they did with liberty, a very important right, one of the fundamental rights, but our Founders knew it was not the most important right. Because when our Founders put together our original documents, they said we are endowed by our Creator, not the Supreme Court, not the Congress, but by our Creator, with certain inalienable rights. And then they listed them. They listed them deliberately in order. Life was first. Liberty was second. The pursuit of happiness was third.

Why did they order them in such fashion? Was it just because it sounded better? Life, liberty, pursuit of happiness sounds better than liberty, life, pursuit of happiness?

No, they ordered these rights because one flows from the other. You can't have happiness without freedom, without liberty, without true liberty. You cannot pursue happiness, you are not free to pursue your happiness. Happiness doesn't mean doing something that makes you feel good. It means living your life in a way that is fulfilling, purposeful. I would argue, the way God meant you to live your life—in service. That is the happiness they envisioned.

It wasn't my ability to dominate you or to impose my will on you. That is not the liberty they are talking about. That is certainly not the happiness. You have to have freedom to have happiness. And, of course, you must have life to be free. If you don't have life, having liberty means nothing. So they ordered these rights.

And what does Roe v. Wade do? Roe v. Wade takes those ordered rights and flips them. We have so contorted liberty in the line of abortion cases, we have so destroyed the essence of what the amenders of the Constitution intended that not only does the definition of liberty itself strike fear and should strike fear into the heart of every law-abiding citizen, because under this line of cases, liberty means whatever you can force on somebody else. Your opinion stands. Not only have we contorted liberty, but we have now exalted liberty over life.

How is that true? It is true because the liberty of the person carrying the child trumps the life of the child within. That is what happens in abortion. The rights of the mother are supreme to the rights of the child throughout the term of the pregnancy. That is what Roe v. Wade and Doe v. Bolton say. Abortions are legal in this country from the time of conception to the time of separation—legal every minute, every second. So the liberty rights trump the life rights.

I said before, there is only one other instance I am aware of in American history where such a stark reversal of rights has been tried. That was over 150 years ago in the Dred Scott case. The Supreme Court said the liberty rights of the slaveholder trump the life rights of the black man or woman. The liberty rights of the slaveholder trumped the rights of the black man and woman. Why?

This may sound familiar. The black man was not considered a person under the Constitution. Of course, this whole debate about Roe v. Wade is what? Is the child in the womb considered a person under the Constitution? The answer is, according to Roe v. Wade, no. It is not. It does not have rights.

So what did Dred Scott do?

Dred Scott said the human being—clearly human—as the Senator from Kansas said, William Wilberforce, when he was a Member of Parliament in England, was trying to stop the slave trade throughout the British Empire and he had, I believe, Wedgewood China make a plate that was then turned into a poster and distributed it throughout England and the world. It was of a black man, a slave, in shackles. The inscription around the plate was, ''Am I not a man and a brother?''

So since 1973, we, too, have had our own version of that plate. Instead of a black man in shackles, we have an innocent child in the womb, who is human—genetically human—and living; it is a human being. Is this child any different in the eyes of the law than the black man under Dred Scott? Can he or she not also say: Am I not a child and a son, or a daughter, a brother, or a sister?

I believe the answer to that is yes. Now, I understand the consequences of this. I truly do. I understand the hardship that recognizing someone's right to life would impose on others. I understand the burden it puts upon women who are carrying a child they don't want. I understand that. I understand this is not an easy decision. I don't make this argument cavalierly, but to the extent I can make it scholarly, I understand the real ramifications of this. I understand there is real human suffering. I understand, like the Senator from California said, these men are telling me what to do with my body. I understand that feeling. I recognize it. I cannot tell you the number of women who have said that to me.

Women have a unique gift, which is the ability to conceive. Men do not have that ability. With all gifts come burdens and responsibilities. I know people, in our society in particular, are not necessarily comfortable with all of the burdens and responsibilities that may come upon them. But we are talking about a human being, a human life. We are talking about exercising the

right of one person's liberty over another person's life, and giving that person their liberty rights, total control over someone's right to exist. That is a big deal. It is a great gift. But with that gift is this burden.

I make the argument that taking these liberties out of order doesn't just lead to this conflict that 1.3 million women will go through in this country—probably many more than that will go through this conflict. So 1.3 million women, or more, will decide the conflict in favor of their liberty rights—snuffing out the life of their unborn child. Almost half of those abortions will be the second, or more, abortion for the woman involved.

I am concerned about that, but I am also concerned about what happens down the road. What precedent have we set that we seem so unwilling to overturn, and what are the long-term consequences of that precedent? I use the example of children who are victims of infanticide. The right of infanticide since Roe v. Wade, you would think, would have gone down. That is what they said would happen. Prior to Roe v. Wade, the rate of infanticide was 4.3 percent. Since Roe v. Wade—in fact, within 10 years of Roe v. Wade, the rate more than doubled. That doesn't make sense, does it? Roe v. Wade was supposed to end unwanted pregnancies. It was supposed to stop infanticide, child abuse, spouse abuse, and domestic violence. Why? Because we weren't putting this burden on women. We were removing this burden. That is what abortion is about, removing a burden.

Then why have all of the things I have just mentioned increased since Roe v. Wade? Why is domestic violence going up? Why has spousal abuse gone up? Why has infanticide gone up? Why has divorce gone up? You can go down the list. Every social indicator that abortion was to cure, including teen pregnancy, has doubled or done more since Roe v. Wade. What happened since we have lifted this burden?

Maybe we really didn't lift the burden. Maybe we created a whole other burden. Maybe—just maybe—we made a moral statement in this country. Maybe the Supreme Court made a moral statement, which is that the life of a baby in the womb doesn't count; it has no legal standing. Now, how does something that has no legal standing, within a few seconds after birth, or the separation from the mother, all of a sudden have full standing? Well, obviously, and unfortunately, a larger number of mothers don't see that transition, don't recognize the difference and think, well, I can kill my child in the womb if I don't want it. What is the difference? It is just a few minutes, just a few seconds. And society recognizes that it is different.

Look at the sentences given out to cases of infanticide, particularly those immediately after birth, and cases of mothers killing their children who are 3, 4, 5, 6, 7 years of age. Look at the differences in sentencing. How does society view this newborn child versus the 4 and 5-year-old child? Look at the sentence. Remember just recently, in the last few years, the ''prom mom'' in I believe Delaware, and there were a couple others that got 2 years, or 18 months, for killing their children after birth. And when one looks at other cases of mothers committing murder, killing their children, they get life imprisonment because the children are 5 or 6 years old. What is the difference? That is how we value these children. We cannot even bring ourselves to consider the difference—even as a society, we look at a difference between a child who has no rights in the womb to one who has sort of quasi rights.

We have a professor at the University of Princeton, Peter Singer, whom the New Yorker magazine calls the most influential living philosopher. Imagine, most influential living philosopher, Peter Singer, Princeton University, not Podunk U but Princeton University, a distinguished chair. Here is a summary of his views:

> The views I put forward should be judged not by the extent to which they clash with accepted moral views, but on the basis of the arguments by which they are defended. Not all who are biological human beings should be counted as human beings.

That is what Roe v. Wade says. Roe v. Wade says not all biological human beings should be counted as human beings. That is not that far.

> Some human beings are more than others.

Just that phrase reminds me of the book ''Animal Farm.''

> The unborn, the newborn, the anencephalic——

Anencephalic is a child born without a brain, just a brain stem——

> and those in a vegetative state, for instance, do not count, or at least do not count fully as human beings.

It sort of reminds me of three-fifths of a person, not fully a human being. That is what the slave was counted as, three-fifths of a human.

> The other qualifying prong of this argument is that it is not rational to draw a hard and fast line between human beings and other forms of animal life. To do so is an instance of speciesism.

He has advocated a waiting period of 28 days after birth before deciding whether a baby has rights that we have to respect. Where do you think this comes from? It comes from Roe v. Wade. Why draw the line at birth? What is so significant about birth as to whether to give rights, particularly if the child, as we heard today from some of the debate, has severe abnormalities? Why give this child full rights? Who are they to insist upon rights?

He goes on to say:

> I should think it would be somewhat short of 1 year. But my point is that it is not for me or anyone else to say.

It reminds me of the clause in the Casey decision: I am not going to say what others—I just do what I want; you shouldn't tell me what to do; just let me do what I want.

> It should be up to the parents.

How many times have we heard this? Let the parents decide. Who are you, as society, to tell a parent what to do in the case of an abortion? Let the parents decide. They know what is in the best interests of their children.

He added:

> It is a decision that parents should make in consultation with their doctor.

Doesn't that sound familiar? You say, well, this is just some crazy man. New Yorker magazine, most influential living philosopher, a chair—a chair—at Princeton University. What does having this notoriety in the media and this distinguished academic position get you? Noticed. By whom? A judge. When? Maybe that is that decision of infanticide. Maybe it is the next case where a child is born to a mother, did not know the child was disabled or deformed, and was so upset about it that she committed infanticide. And a judge feeling sympathy for the mother, as society does—it is a horribly tragic situation, particularly if it is a young mother who went through a pregnancy. And so the judge does not want to do anything to ruin this girl's life. She might be from a good family. She might have a promising career. So why would we want to put her in jail and do something? I have to figure out a way not to impose a burden on her. Well, there is this distinguished chair at Princeton University; New Yorker magazine calls him a great thinker, ahead of his time; I have an idea; I will say—and Peter Singer writes extensively about this—that it is natural for a woman to kill her child. And so they will use all of his writings and come up with some mumbo-jumbo decision to give either no sentence or a light sentence. Thus, it gets into the case law.

Initially, it will be viewed as an outlier and thrown out as a ridiculous decision; it will be overturned. That happens with regularity, particularly in California in the Ninth Circuit. They are constantly throwing cases out of the Ninth Circuit in the Supreme Court.

Do not think for a minute these decisions like the Pledge of Allegiance case do not have the effect of a wave coming up on the sand. They go back, but they keep coming back. Eventually, they wear away the beach. So this will be the case here.

People are going to listen to this and maybe read this and say: Here is the Senator. It is late at night, and he is not thinking very clearly. I hope 30 years from now, God willing, I will still be on this Earth, not in the Senate Chamber, I hope. I hope I can read this statement and say: Boy, you were a fool; boy, that was really a silly argument you made. What were you thinking?

I fear I will not be able to say that because our culture is so fixated on relieving us of all of our burdens, of resting away all of our responsibilities so we can pursue what makes us happy. So do not be surprised that this poisonous line of cases will continue to

poison the water of this culture and will lead to things such as partial-birth abortion.

I remember during previous debate I got a letter from a man in England saying he was watching the debate and heard the Senators describing these children in utero, these deformed children and saying: We need to keep partial-birth abortion available for these mothers late in pregnancy who find out their children are not perfect because we have to give mothers the right to destroy this child who is not perfect, who may not live long, or may have some abnormalities that are problematic. He kept hearing these cases after cases.

The other side does not argue that partial-birth abortion should be legal for healthy mothers and healthy babies, even though that is 99 percent of the abortions that occur, are partial-birth abortion; 100 percent in Kansas.

What they argue is, it is the hard cases. He said: I sat there and listened to Member after Member get up and describe people like me, for I am in a wheelchair and I have spina bifida. I am one of those cases, and they want to get rid of me.

And you say: Oh, no, abortion does not have an impact on how we view life. Oh, no, we do not devalue people. The Senator from New York asked today: Is there an exception in the bill for children with fetal anomalies? She asked me: Does the Senator have an exception in the bill for children with fetal anomalies? In other words, maybe we will sign off on the fact that healthy babies with healthy mothers cannot be killed, but we are going to provide less legal protection for healthy mothers with babies who have anomalies.

The poison of Roe v. Wade infects us all, and the amazing thing is we do not even know it. It is so part of us. We do not even realize it. It is that corrosive, slow effect that hardens us to life, hardens us away from any burden or sacrifice or responsibility. It is truly a poison that infects us all.

Today, the Senator from California, Mrs. FEINSTEIN, offered a letter from an obstetrician from the University of California San Francisco Medical Center about cases in which a partial-birth abortion was necessary. I have a letter in response to that from Dr. Nathan Hoeldtke, who is the medical director of Maternity-Fetal Medicine at Tripler Medical Center, Honolulu, HI. Both are experts and board certified in maternal-fetal medicine, the doctor whom Senator FEINSTEIN quoted who proposed these cases and Dr. Hoeldtke.

The letter from Dr. Hoeldtke reads:

DEAR SENATOR SANTORUM, I have read the letter from Dr. Philip Darney addressed to Senator Feinstein regarding the intact D&E. often referred to as ''intact D&X'' in medical terminology, procedure, partial-birth abortion, and its use in his experience.

As a board certified practicing Obstetrician/Gynecologist and Maternal-Fetal Medicine sub-specialist I have had much opportunity to deal with patients in similar situations to the patients in the anecdotes he has supplied.

In neither of the type of cases described by Dr. Darney, nor in any other that I can imagine, would an intact D&X procedure be medically necessary, nor is there any medical evidence that I am aware of to demonstrate, or even suggest, that an intact D&X is ever a safer mode of delivery for the mother than other available options.

In the first case discussed by Dr. Darney a standard D&E could have been performed without resorting to the techniques encompassed by the intact D&X procedure.

In the second case referred to it should be made clear that there is no evidence that terminating a pregnancy with placenta previa and suspected placenta accreta at 22 weeks of gestation will necessarily result in less significant blood loss or less risk to the mother than her carrying later in the pregnancy and delivering by cesarean section. There is a significant risk of maternal need for a blood transfusion, or even a hysterectomy, with either management. The good outcome described by Dr. Darney can be accomplished at a near term delivery in this kind of patient, and I have had similar cases that ended happily with a healthy mother and baby. Further a standard D&E procedure could have been performed in the manner described if termination of the pregnancy at 22 weeks was desired.

I again reiterate, and reinforce the statement made by the American Medical Association at an earlier date, that an intact D&X procedure is never medically necessary, that there always is another procedure available, and there is no data that an intact D&X provides any safety advantage whatsoever to the mother.—Sincerely, Nathan Hoeldtke.

I thank the Chair, and those who are watching, for their indulgence. I appreciate the tremendous support of the Chair and the statement he made today.

It is very heartening to be on the verge of passing a bill that could end up in law, signed by the President in very short order.

I gave a long talk about Roe v. Wade, but this is not an assault on Roe v. Wade. The point we are making is that this is actually outside of Roe v. Wade. The Court has foreclosed us from having a public debate, in having the public and their elected representatives decide the issue of abortion. They have taken it from us and have jealously coveted it for 30 years. But this is an attempt to stop a brutal evil that even the Senator from California, Mrs. BOXER, said her constituents could not bear to watch.

Well, if one cannot bear to watch it, how can they say they believe in it? If it chills one to the bone that we do this to little children, how can we allow it to be legal, to place a baby in the hands that were trained to heal and kill the child in the hands of a doctor?

People know evil when they see it. I believe abortion is an evil. For the first time in this debate, people saw the face, people saw what was being aborted. It was not a blob of tissue. It was not a group of cells. It was a little baby with arms and legs who wanted one thing, the opportunity to live, but who was brutally denied that by the hands of a doctor. Hopefully today—actually, tomorrow with the vote—it will be the beginning of the end of this brutal procedure.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SANTORUM. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:28 p.m., adjourned until Thursday, March 13, 2003, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 12, 2003:

THE JUDICIARY

RALPH R. ERICKSON, OF NORTH DAKOTA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NORTH DAKOTA.

WILLIAM D. QUARLES, JR., OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND.